SETON HEALTHCARE CLINICAL EDUCATION CENTER OBSERVER AND CONFIDENTIALITY/NON-DISCLOSURE AGREEMENT  
(For use when no patient contact will occur between any patient and observer)

Note:  This Agreement is NOT for use for observers of invasive procedures.  Please refer to SETON Administrative Policy 1000.29 Obtaining Consent for Non-Medical Observers for observers of invasive procedures.

This Observer and Confidentiality/Non-Disclosure Agreement (“Agreement”) is entered into by and between Seton Healthcare, a Texas non-profit corporation with an address of 1345 Philomena, Austin, Texas 78723, Clinical Education Center (“CEC”) and ____________________________, (Observer).  CEC and Observer shall be jointly referred to as the “Parties.” Reference to the CEC shall incorporate reference to Seton Healthcare and its employees, agents, and independent contractors.

NOW THEREFORE, in consideration of the mutual covenants and promises set forth herein, and in consideration of the disclosure of Confidential Information to Observer, the parties agree as follows:

1. Description.  The hospital operations and/or clinical educational setting which the Observer will observe are: Simulation and Skills Labs ____________________________.

2. Purpose.  The purpose for which the Observer will be observing hospital operations is: ____________________________ (must be related to CEC’s treatment, payment or healthcare operations or other purpose as approved by the HIPAA Privacy Office).

3. Location.  The CEC location where Observer will observe is: 1400 North IH 35, Austin, Texas ____________________________

4. Dates.  The dates the Observer will be observing are: ____________________________ (not more than 40 hours total).

5. Affiliation.  Observer is affiliated with the following school, hospital or other entity: ____________________________

6. Compliance with Policies.  While on-site at CEC’s facilities, Observer shall comply with all instruction of CEC’s personnel and abide by all Seton Healthcare and CEC policies and procedures, rules and regulations (hospital, departmental and otherwise).  CEC reserves the right to remove Observer immediately from any CEC location for failure to comply with reasonable instructions or policy.

7. Confidentiality.  Observer shall maintain strict confidentiality of all patient information that may be encountered and shall not use or disclose such information to any other person or entity unless required by law.  Observer shall comply with all federal, state and local laws and regulations relating to the confidentiality of patient information.  In addition, Observer shall also maintain strict confidentiality of all business, operational, financial or other information about the CEC and shall not use or disclose such information to any other person or entity except for the limited purposes stated in Section 2 above or as required by law.  The obligations of this Section 7 shall survive termination of this agreement.

8. Patient Contact/Records. OBSERVER SHALL NOT HAVE ANY DIRECT CONTACT WITH PATIENTS.  Observer shall not make entries onto medical records or other business records of the CEC.  All such records shall remain the property of CEC.

9. RELEASE AND INDEMNIFICATION. OBSERVER HEREBY RELEASES CEC FROM ANY LIABILITY WHATSOEVER RELATED TO OBSERVER’S PRESENCE AT ANY CEC FACILITY, INCLUDING PHYSICAL INJURY, EMOTIONAL INJURY OR PROPERTY LOSS.  Observer agrees to indemnify, defend and hold harmless CEC, its officers, directors, agents, employees and representatives from and against any and all claims, actions, liabilities, losses, damages, fines, penalties and expenses (including amounts paid in settlement and reasonable attorneys’ fees), arising from personal injury or damage to property in connection with Observer’s presence at CEC facilities.  Observer acknowledges that the provisions of this Agreement, including but not limited to this Section 9, are consideration for CEC’s providing access to its facilities to Observer, and that but for Observer’s execution of this Agreement, CEC would not have provided Observer with access to CEC’s facilities.  The obligations of this Section 9 shall survive termination of this Agreement.

***KEEP FULLY SIGNED COPY IN THE FILES OF THE CEC DEPT SUPERVISING THE OBSERVER AND SEND COPY TO SETON HEALTHCARE LEGAL VIA INTER-OFFICE MAIL***

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10. CONFIDENTIAL INFORMATION
The term “Confidential Information” means CEC’s business, operational, financial, and other information. Confidential Information shall include, without limitation, business development plans, market projection and forecasting materials, technical plans and specifications, finance and budget data, contract terms, human resources information, operational information, policies and procedures, internal memoranda, administrative records, audit reports, intellectual property, scientific, technical, trade or business information possessed, obtained by, developed for or given to the CEC including, without limitation, formulations, techniques, methodology, tests, clinical protocols, data, reports, know-how, sources of supply, patent positioning, relationships with consultants and employees, business plans and business developments, information concerning the existence, scope or activities of any research, development, clinical trials, marketing or other projects of the CEC. Confidential Information shall include information that is conveyed to Observer in any format (by hard copy, electronically, orally, or otherwise).

11. PROTECTION OF CONFIDENTIAL INFORMATION
Observer understands and acknowledges that the Confidential Information has been developed or obtained by the investment of significant time, effort and expense by the CEC, that the Confidential Information is a valuable, special and a unique asset of the CEC, and that the information provides the CEC with a significant competitive advantage. Therefore, Observer agrees:

(a) to hold all Confidential Information in confidence and not to disclose such Confidential Information to any party;
(b) not to copy, duplicate or modify any Confidential Information;
(c) not to use any Confidential Information to provide any description of the CEC’s business to any party;
(d) not to use any Confidential Information to provide any opinion of the condition or the operations of the CEC’s business to any party;
(e) not to use any Confidential Information in any manner to benefit itself (except as contemplated by the business relationship described above) or any other party; and
(f) not to disclose any Confidential Information within Observer’s entity except on a need-to-know basis.

without prior written consent of the CEC. Observer shall use the Confidential Information solely for the purpose of furthering the business relationship with CEC or for educational purposes and for no other reason.

This confidentiality obligation shall not apply to information: (i) demonstrably in the public domain at the time of the disclosure without violation of any confidentiality obligation to CEC; (ii) is demonstrably disclosed to Observer by a third party without violation of any confidentiality obligation to CEC; or (iii) is required to be disclosed pursuant to governmental or judicial process, provided that written notice of such process is promptly provided to the CEC in order that it may have every opportunity to intercede in such process to contest such disclosure.

12. UNAUTHORIZED DISCLOSURE OF INFORMATION
The CEC shall have the right to audit Observer’s information dissemination processes to ensure compliance with this Agreement, and Observer shall fully cooperate with such audit. If Observer breaches the terms of this Agreement, or if the CEC has a reasonable basis to believe that Observer is about to breach the terms of this Agreement, the CEC shall have the right to enjoin Observer through a restraining order and/or injunction process. This remedy is non-exclusive, and the CEC shall have the right to seek all other legal or equitable remedies available to it. Should the CEC need to enforce the provisions of this Agreement, Observer agrees to pay all of costs and expenses of CEC, including court costs and attorneys' fees, which are incurred in bringing the enforcement action. Observer also agrees to indemnify, defend and hold CEC harmless from and against any claims which result from Observer’s breach or imminent breach of this Agreement.

13. RETURN OF CONFIDENTIAL INFORMATION
Observer shall immediately return all Confidential Information to CEC upon request or upon the termination of this Agreement. Upon request, Observer shall also deliver to CEC a signed, written statement certifying that all materials have been returned within five (5) days of receipt of the request.

14. RELATIONSHIP OF PARTIES
Neither party has an obligation under this Agreement to consummate any legal relationship with the other party, to enter into any contract with the other party, or to purchase any service or item from the other party. All terms and conditions of any legal

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relationship, contract, or purchase shall be the subject of a separate agreement between the parties. This Agreement does not create any employment, agency, partnership or joint venture relationship.

15. NO WARRANTY
Observer acknowledges and agrees that the Confidential Information provided is on an AS IS basis. CEC makes no warranties, express or implied, with respect to the Confidential Information and hereby expressly disclaims any and all implied warranties of merchantability and fitness for a particular purpose. In no event shall CEC be liable for any direct, indirect, special or consequential claims or damages in connection with or arising out of the performance or use of any portion of the Confidential Information.

16. INTELLECTUAL PROPERTY RIGHTS
Observer shall not acquire any intellectual property rights under this Agreement except the limited right to use the Confidential Information as set forth in this Agreement. Observer acknowledges that all copyrights, patents, trademarks and other intellectual property rights related to the Confidential Information are the property of CEC, even if suggestions, comments, and/or ideas made by Observer are incorporated into the Confidential Information, and Observer agrees that ownership of such suggestions, comments, and/or ideas are irrevocably assigned to CEC. Observer agrees to sign any affidavits or other documents affirming such assignment.

17. TERMINATION
This Agreement shall automatically terminate on the effective date of any written notice by a party of its intent to terminate this Agreement, upon termination of the negotiations between the parties to enter into a business relationship, upon the conclusion of the observer opportunity, or the termination of the established business relationship (if any) between the parties. Notwithstanding termination of this Agreement, the obligations under this Agreement shall survive for a period of five (5) years after termination.

18. GENERAL PROVISIONS
Any amendments to this Agreement must be in writing and signed by both parties. This Agreement shall be construed under the laws of the State of Texas. Any suit, action, or proceeding with respect to this Agreement, or any judgment entered by any court in respect thereof shall be brought in Travis County, Texas, and the parties hereby submit to the exclusive jurisdiction of such courts for the purpose of any such suit, action, or proceeding.

IN WITNESS WHEREOF, the parties have signed this Agreement to be effective as of the first day on which Confidential Information is disclosed to Observer, or the Effective Date, whichever is earlier.

If Observer is under 18 years of age, the Observer’s parent or legal guardian must sign below:

I am the parent or legal guardian of the Observer, and I agree to allow my child to observe as set forth in this Agreement. In particular, I acknowledge and agree to be bound by the provisions of Section 9 of this Agreement in the same manner as the Observer.

**OBSERVER**

SETON HEALTHCARE CLINICAL EDUCATION CENTER

Signature: ___________________________

Printed Name: ___________________________  Signature of Senior Leadership Team Member

Address: ___________________________

Date: ___________________________  Date: ___________________________

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